

**CONNIE BUSSMAN** )  
Claimant )  
VS. )  
**COMMUNITY NATIONAL BANK** )  
Respondent )  
AND )  
**ZURICH AMERICAN INSURANCE CO.** )  
Insurance Carrier )

## ORDER

## APPEARANCES

## RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award. In addition, at oral argument the parties agreed that the evidence reflects claimant's average weekly wage to be \$972.08 rather than the figure listed in the Award. Thus, the Award will be modified to reflect this agreement.

**ISSUES**

The ALJ adopted the permanent impairment assessment offered by Dr. Prostic and awarded claimant a 21 percent whole body impairment. This consisted of 4 percent to the whole body coupled with a 30 percent to the left upper extremity.

Respondent takes issue with the ALJ's wholesale adoption of Dr. Prostic's opinions over those offered by Dr. Weilert and Dr. Frevert. Respondent contends claimant's work-related injury left her with a 15 percent impairment to the left upper extremity only. Respondent argues that claimant's neck complaints were temporary in nature and are now resolved. Thus, respondent asks that the Board modify the Award to reflect only a single scheduled injury to the left upper extremity. Conversely, claimant contends that the Award should be affirmed in all respects.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

Claimant sustained injury in a motor vehicle accident on August 1, 2005. She was initially treated for a broken arm and she was eventually diagnosed with Reflex Sympathy Dystrophy (RSD). After some conservative treatment for that diagnosis, including ganglion blocks which left claimant with a whole host of side effects, claimant was released from treatment.

At her request, claimant was granted 3 visits with her local chiropractor, Dr. Steven Weilert. Claimant asserts that these visits were to treat her ongoing neck complaints. At his deposition Dr. Weilert explained that he utilized an electrical system stimulator that required one of the leads to be placed on claimant's trapezius muscle. Other than that, he provided no treatment whatsoever to claimant's neck. Moreover, his records do not indicate that claimant voiced any neck complaints although he concedes that such complaints would not be unusual given the injury to her left upper extremity.

At her lawyer's request, claimant was evaluated by Dr. Edward Prostic in March 2007. According to Dr. Prostic, claimant sustained a cervical strain as well as RSD in her left upper extremity. Based upon his examination and a review of her records, he assigned a 4 percent impairment to the body as a whole to the cervical spine impairment and a 30 percent permanent partial impairment to the left upper extremity. When combined, the rating is 21 percent to the whole body. It is worth noting that Dr. Prostic found no tenderness in claimant's neck nor any muscle spasms. The only positive finding was claimant's limited range of motion.

At respondent's request, claimant was evaluated by Dr. Chris Fevurly, in August of 2007. Dr. Fevurly noted claimant's neck and upper extremity complaints and diagnosed ulnar midshaft fracture and an acute cervical strain. Dr. Fevurly disagreed with the diagnosis of RSD as he found too few of the symptoms present in claimant to qualify for such a diagnosis. And he further disagreed with other diagnoses offered in this case and suggested that he believes claimant's problems are as a result of the impingement of the scaphoid or lunate bone or related to her carpal bones.

Dr. Fevurly assigned a 0 percent permanent impairment to claimant's cervical area as he believed those symptoms had resolved, in spite of claimant's sporadic and ongoing complaints of pain. He did assign a 15 percent permanent partial impairment to claimant's left upper extremity as a result of her loss of grip strength. Dr. Fevurly explained that grip strength loss is not always a valid indicator of impairment as it is more related to pain. But given the lack of other objective signs of impairment, this was the only factor he had available to him for purposes of providing a rating.

When cross examined, Dr. Fevurly conceded that based upon certain tests results involving subjective grip strength, claimant's condition could qualify for a 20 to 30 percent impairment to the left upper extremity. He simply chose not to interpret the test results in that manner as he believed they were based on subjective criteria.

When faced with this evidence, the ALJ elected to adopt the opinion of Dr. Prostic. The Board has considered this finding and concludes that the ALJ's Award should be modified. Dr. Prostic's minimal findings do not support his assessment of a 4 percent permanent partial impairment to the cervical spine. Moreover, he is the only physician to have concluded that claimant sustained a neck impairment. While claimant may have believed that she was receiving treatment from Dr. Weilert for her neck complaints, complaints that she did not assert during the course of that treatment, it does not appear from the evidence that that was the case. The Board believes it is more likely than not that claimant's impairment is limited to her left upper extremity.

The Board further modifies the Award to reflect a 30 percent permanent partial impairment to the left upper extremity. Both Dr. Prostic and a rather reluctant Dr. Fevurly have opined that claimant's permanent impairment to her left arm is 30 percent. And given claimant's significant left arm complaints, the residuals from the RSD, 30 percent impairment is reasonable under these circumstances. Thus, the Award is modified to reflect a 30 percent permanent partial impairment to the left upper extremity.

### **AWARD**

**WHEREFORE**, it is the finding, decision and order of the Board that the Award of Administrative Law Judge Thomas Klein dated January 28, 2008, is modified as follows:

The claimant is entitled to 1.00 weeks of temporary total disability compensation at the rate of \$467.00 per week in the amount of \$467.00 followed by 62.70 weeks of permanent partial disability compensation, at the rate of \$467.00 per week, in the amount of \$29,280.90 for a 30 percent loss of use of the arm, making a total award of \$29,747.90.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of May 2008.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Angela D. Trimble, Attorney for Claimant  
Douglas C. Hobbs, Attorney for Respondent and its Insurance Carrier  
Thomas Klein, Administrative Law Judge